

1 THE HONORABLE THOMAS S. ZILLY
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7 **UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON**

8 GLACIER NORTHWEST, INC.,

9 Plaintiff,

10 v.

11 CEMENTAID INTERNATIONAL
12 MARKETING LTD.,

13 Defendant.

14 Case No. 2:18-cv-00556-TSZ

15 **CEMENTAID INTERNATIONAL
MARKETING LTD.’S REQUEST
FOR JUDICIAL NOTICE IN
RELATION TO ITS REPLY IN
SUPPORT OF ITS MOTION TO
DISMISS GLACIER NORTHWEST,
INC.’S AMENDED COMPLAINT**

16 Pursuant to Federal Rule of Evidence 201, Defendant Cementaid International Marketing,
17 Ltd., (“Cementaid”) requests that the Court take judicial notice of certain documents, attached
18 hereto, in relation to Cementaid’s Reply in Support of its Motion to Dismiss Glacier Northwest,
19 Inc.’s Amended Complaint.

20 **I. Legal Standard**

21 On a motion to dismiss, the Court may, pursuant to Federal Rule of Evidence 201, “take
22 judicial notice of matters of public record outside the pleadings.” *MGIC Indem. Corp. v. Weisman*,
23 803 F.2d 500, 504 (9th Cir. 1986); *Valley Fruit Orchards v. Global Horizons Manpower, Inc.*, No.
24 CV-09-3071, 2010 WL 1286367, at *2 (E.D. Wash. Mar. 26, 2010). Moreover, a court may take
25 judicial notice of a document, such as a contract, “whose authenticity is not contested and which
26 Plaintiff has relied on his complaint.” *Chandola v. Seattle Housing Authority*, Case No. C13-557,
27 2014 WL 4540024, at *1 (W.D. Wash. Sept. 11, 2014); *Swartz v. KPMG LLP*, 476 F.3d 756, 763

1 (9th Cir. 2007) (“[A] court may consider a writing referenced in a complaint but not explicitly
2 incorporated therein if the complaint relies on the document and its authenticity is unquestioned.”).

3 **II. Judicial Notice of the Attached Document is Appropriate**

4 Cementaid requests that the Court take judicial notice of the following declaration, which
5 was publicly filed by Glacier Northwest, Inc. (“Glacier”), in the following actions:

6 1. Exhibit 1: Supplemental Response of Glacier Northwest, Inc., To OSC Re Sanctions
7 Re Insurance Policies, filed on October 19, 2018, in the Superior Court of the State
8 of California, County of San Francisco (Lead Case No. CGC-16-553758, Individual
Case No. CGC-557830)

9 Because this declaration constitutes a matter of public record filed by Glacier in an official
10 court docket, this Court may take judicial notice of it. *MGIC*, 803 F.2d at 504 (taking judicial
11 notice of a motion to dismiss and supporting memorandum); *Valley Fruit Orchards*, 2010 WL
12 1286367, at *2 (taking judicial notice of court filings and records). Moreover, any objection to this
13 declaration should be overruled since the statements were made by Glacier’s counsel under penalty
14 of perjury and thus constitute party admissions, an applicable exception to the hearsay rule.

15 **III. Conclusion**

16 For the foregoing reasons, Cementaid requests that the Court take judicial notice of the
17 documents referenced herein.

18 Dated: December 14, 2018

19 Respectfully submitted,

20 **BRACEWELL LLP**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on December 14, 2018 to all counsel of record who have consented to electronic service via the Court's CM/ECF system.

/s/ Philip J. Bezanson
Philip J. Bezanson